

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 2, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 256, HB 174, HB 295,
2/26/2001
Executive Action: HB 119, HB 256, HB 174, HB 295
HB 182

HEARING ON HB 256

Sponsor: REP. CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: George & Sherri Hoffman
John Connor, MT County Attorneys Association

Opponents: Mike Barrett, Representing Himself

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN, explained this bill and how it pertains to reckless and careless driving involving a fatality or serious bodily injury of a person. She said the current maximum penalty for careless and reckless driving is \$100. She said that when a fatality or serious bodily injury incident occurs there is a miscarriage of justice when the court only imposes a \$100 fine and she believes the penalties for this type of incidences should be greater.

Proponents' Testimony:

George & Sherri Hoffman handed in their testimony **EXHIBIT (jus48a01)**.

John Connor, MT County Attorneys Association, said reckless and careless driving should reflect a penalty of a crime resulting from serious bodily injury or death.

Opponents' Testimony:

Mike Barrett handed in a witness statement **EXHIBIT (jus48a02)**.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked what original language had been taken out and why did the House make the change. **REP. YOUNKIN** said the House Judiciary felt that imprisonment up to five years as a felony would be too much for reckless or careless driving. She thought that the language adding "up to", (an example, up to \$10,000 fine or imprisonment up to one year) would be good enough because the current maximum penalty is only \$100 with no jail time.

SEN. GRIMES mentioned the option of criminal endangerment and changing those sections of the law making it a higher standard to be applied to reckless driving. **REP. YOUNKIN** said she had not consider looking at those other statutes. She said if a driving violation is serious enough for criminal endangerment then it involves serious circumstances.

SEN. MIKE HALLIGAN asked about the House's insertion of purposeful language in the bill. **John Connor** explained a situation shouldn't have an absolute liability felony unless the legislature had said. He said it was suggested to add the mental

state, but then the penalty was reduced to a misdemeanor penalty.

SEN. HALLIGAN asked if the incident, from the testimony looking at cattails, could be considered purposeful. **John Connor** said that would not be considered purposeful.

Closing by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN, explained the insertion of the word purposeful could be taken out. She said these are not mandatory sentences they are at the discretion of the judge and the county attorneys could seek a stiffer penalty. She pointed out the language "not to exceed" and "not exceeding" that are at the discretion of the judge. She summarized by saying this bill serves as a reminder that people are driving a deadly weapon and there are serious consequences involved when the driver is not paying attention.

HEARING ON HB 174

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **None**

Opponents: **Mike Barrett, Representing Himself**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, explained the bill, which deals with the same sentencing options for a judge on a drug paraphernalia case as it does on a drug possession case. He pointed out that a person, who is under the age of 22, was presumed entitled to a deferred imposition of sentence. A deferred imposition of sentence is a sentence upon completion of certain conditions and the offender may have this stricken from his or her record.

{Tape 1; Side B}

Proponents' Testimony: **None**

Opponents' Testimony:

Mike Barrett handed in a witness statement **EXHIBIT 2.**

Questions from Committee Members and Responses:

CHAIRMAN GROSFIELD asked why the age of 22 is used. **REP. JENT** said this comes from the exact copy of the deferred sentence standard in the possession statute making it consistent.

CHAIRMAN GROSFIELD asked if this would be used in an incident with more than one charge. **REP. JENT** said there cannot be a paraphernalia charge standing alone because of the intent requirement.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, felt this statute needed to be changed to allow city justices and peace court judges clear direction as to whether they should or should not give a deferred sentence in paraphernalia cases with young people.

HEARING ON HB 295

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN,**

Proponents: **Pam Bucy, Assistant Attorney General**
Ken Hoovestol, Montana Snowmobile Assoc.

Opponents: **None**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, handed out definitions of motor vehicles **EXHIBIT(jus48a03)**. He said this bill standardizes the use of the words motor vehicle and vehicle through the D.U.I. laws whereas before they were used interchangeably. He said this bill also provides when a judge suspends a sentence imposed, the penalty statute for a D.U.I., and orders the offender to complete dependency treatment, the judge would have jurisdiction to impose any portion of that suspended sentence for a year. He felt this was necessary because the treatment ordered by the judge takes longer than six months and it is important to lengthen the treatment. He pointed out vehicles other than traditional vehicles such as snowmobiles and four-wheelers that are effected by this bill. He added this bill strikes the word motor modifying vehicle, which would enable law enforcement to get around the ambiguities of D.U.I. offenders.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, said this bill changes the definition in the statutes to vehicle rather than motor vehicle, which would be helpful in D.U.I. cases. She pointed out this

bill expands the period for suspended sentence to one year and this is important to prosecutors due to the treatment involved. She felt these were important changes to the bill and she urged a do concur recommendation from the committee.

Ken Hoovestol, Montana Snowmobile Assoc., talked about the trial systems used by motor vehicles and how this can be effective pertaining to this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked if the date of sentence is up to one year from the date of the sentencing. **REP. JENT** said the date sentence is pronounced to be one year.

SEN. HALLIGAN said that the record should reflect that and it shouldn't attempt to allow a judge any additional suspension time beyond the total time of one year that is allowed. **REP. JENT** agreed that this was correct.

SEN. GRIMES asked if there are certain definitions of vehicles or does this pertain to anything a person operates. **REP. JENT** mentioned the handout of definitions and explained the motor vehicles definition. He pointed out that if it is not drawn by animal power or is on a track like railroads and if not a bicycle then it is a vehicle.

SEN. JERRY O'NEIL asked what the determent would be if the sentence was two years instead of one year. **REP. JENT** believed that one year was adequate.

SEN. HALLIGAN asked if a snowmobile would have to be driven on a public highway to have the same standards. **REP. JENT** answered yes, the person commits the offense of a D.U.I. when operating a vehicle upon the ways of the state open to the public with this bill.

{Tape 2; Side A}

SEN. HALLIGAN wondered how trails with snowmobiles are a way opened to the public. **REP. JENT** said the definition could be found in Title 61. He said there is a jury instruction that defines ways open to the public and it is quoted in the statute in doing so.

CHAIRMAN GROSFIELD clarified the distinction of vehicles pertaining to snowmobiles and public highway, which is the entire

width between the boundary lines of every publically maintained way. He said that some of these snowmobile trails are maintained by clubs not publically. **REP. JENT** didn't think a snowmobile trail in the woods maintained by a club would be considered a public highway. **Ken Hoovestol** said that statutorily the trail system, under Montana law, says open to the public and there could be an interpretation difference.

SEN. GRIMES said that a privately maintained un-posted roadway, which is commonly used by the public could be deciphered as a public access. **Ken Hoovestol** agreed that roads maintained for general public would be a public way.

SEN. GRIMES said he didn't feel the intent of this bill was clear. **REP. JENT** pointed out the definitions of the public way and said they need to decipher if it fits the intent of the bill.

SEN. HALLIGAN said it sounded as if a groomed trail that is different than a logging road needs to be clarified. **REP. JENT** said that is one of the items the committee would need to decide.

CHAIRMAN GROSFIELD talked about a similar bill that was tabled last session in the House and asked for background of that bill. **Ken Hoovestol** said the committee raised the issue of verifying the alcohol content due to the breathalyzer test. He said that the offenders would travel back into town to use the proper breathalyzer test instead of doing the test while on the trail and could possibly sober up by then.

CHAIRMAN GROSFIELD asked if the preference would be for any groomed snowmobile trails. **Ken Hoovestol** said no, the preference would be to exclude groomed trails except if they are on a public roadway or cross a public roadway.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, summarized the bill and said it is needed to insure the safety of pedestrians and snowmobilers. He added that no fiscal impact would effect the state or the local governments because the treatment is paid for by the offender.

EXECUTIVE ACTION ON HB 119

Discussion:

Valencia Lane, Legislative Staff, explained changes made to this bill.

SEN. HALLIGAN asked for clarification of the language. **Valencia Lane** said the Montana Supreme Court had a footnote in Sage vs. Campbell stating that any prisoners sentenced after 1989 does not have a constitutionally protected liberty interest in parole.

SEN. O'NEIL suggested the bill be amended to change the sentencing date and by doing that then a subcommittee could take a look at it and see which way it should be.

SEN. HALLIGAN felt that this bill needs to be handled carefully and the language be specific.

SEN. GRIMES wondered if a fiscal savings would come from the intent of this bill.

Valencia Lane explained this bill had come from a legislative audit review and the legislature had changed other sections allowing the board to designate other to conduct hearings.

CHAIRMAN GROSFIELD pointed out the fiscal note and said there isn't much change.

SEN. HALLIGAN said the sentencing date of March 29th shouldn't be an issue. **Valencia Lane** said that this date is the date it became effective thereby creating two classes of prisoners.

SEN. GRIMES wanted language added in paragraph five stating "if otherwise provided by law". **Valencia Lane** said that could be done.

SEN. O'NEIL thought that if this bill wasn't passed it would create a bigger fiscal note. He wanted to add language stating "if the sentence was prior to March 29, 1989".

{Tape 2; Side B}

CHAIRMAN GROSFIELD pointed out there would need to be changes to this amendment in three different places for the language added.

SEN. RIC HOLDEN asked if was a one word amendment. **Valencia Lane** answered that it was not because it talks in terms of an offense being committed.

EXECUTIVE ACTION ON HB 256

Motion: **SEN. HALLIGAN** moved that **HB 256 BE AMENDED**. Amendments handed out **EXHIBIT(jus48a04)**.

Discussion:

CHAIRMAN GROSFIELD said the only change for the amending of this bill would be to strike the word "purposeful" on page 2.

Vote: Motion that **SB 256 AMENDMENT BE ADOPTED** carried unanimously.

Discussion:

SEN. GRIMES commented to keep with guidelines they should recognize reckless vs. careless driving. He said these penalties awarded would be substantially less and they should raise the jail term to five years.

SEN. O'NEIL felt the issue was reckless driving, not drunken driving and he tried to offer clarification towards the differences.

CHAIRMAN GROSFIELD pointed to Title 45-5-205, which explains negligent vehicular assault and tried to clarify the issue.

SEN. GRIMES felt the understanding dealt with the alcohol intake of the individual, who was mentioned in the testimony. He said by passing this bill there may be some disparity.

CHAIRMAN GROSFIELD agreed with the disparity and wondered what the issues were with the House Committee and this bill.

SEN. GRIMES explained the difference of drunk driving opposed to the road rage driving where a death is caused during the accident.

SEN. HALLIGAN asked if there was any negligent vehicular homicide statute. **Valencia Lane** said there was no negligent vehicular homicide, but there is negligent homicide dealing with a death of a human being with prison sentence not to exceed 20 years and a fine to not exceed \$50,000 or both.

SEN. HALLIGAN wondered why that charge couldn't be used for this bill. **Valencia Lane** agreed and she didn't understand the incident from the testimony.

Motion: **SEN. GRIMES** moved that **HB 256 BE CONCURRED IN AS AMENDED.**

Substitute Motion: **SEN. HOLDEN** made a substitute motion that **HB 256 BE AMENDED.**

SEN. HOLDEN explained his substitute motion changing language on page 2 and page 3, striking "serious bodily injury". He felt the phrase was subjective.

CHAIRMAN GROSFIELD pointed to Title 45's definition of serious bodily injury.

SEN. HOLDEN **WITHDREW** his first motion to the amendment and still held the substitute motion to strike the phrase "bodily injury from reckless driving".

CHAIRMAN GROSFIELD said to look at current law and felt that reckless driving is more serious than careless driving.

SEN. HOLDEN said it is hard to determine how the police officer decides what penalty to award the offender.

Vote: Substitute Motion **failed** with **SEN. HOLDEN** voting yes.

Vote: Motion **HB 256 BE CONCURRED IN AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON HB 174

Motion: **SEN. HALLIGAN** moved that **HB 174 BE AMENDED**. Amendments were handed out **EXHIBIT(jus48a05)**.

Discussion:

SEN. HALLIGAN said that if this bill is to be consistent with the other statute, 45-9-102 dealing with age of the person involved, they should insert new language.

Substitute Motion: **SEN. O'NEIL** made a substitute motion that **HB 174 BE AMENDED**.

SEN. O'NEIL wanted to delete the age and he felt it didn't matter what age the offender would be.

CHAIRMAN GROSFIELD agreed with deleting the age and he didn't understand the reasoning for the certain age limits.

SEN. HALLIGAN agreed with the motion and added the next session will probably be working on the section of the codes if this bill passes.

Vote: Substitute Motion **carried unanimously**.

CHAIRMAN GROSFIELD mentioned changing 45-9-102 to be consistent with this bill along with the changes needed in the title of the bill.

Motion/Vote: **SEN. O'NEIL** moved that **HB 174 BE AMENDED** by making consistent with the substitute motion. **Motion carried unanimously.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 174 BE CONCURRED IN AS AMENDED.** **Motion carried unanimously.**

{Tape 3; Side A}

EXECUTIVE ACTION ON HB 295

Discussion:

SEN. O'NEIL liked the bill the way it was and added he didn't agree with the snowmobiles being on public trails.

CHAIRMAN GROSFIELD asked what about groomed trails. **SEN. O'NEIL** said that sounds fine and if it was drafted by a group then it shouldn't be included with this bill.

CHAIRMAN GROSFIELD pointed out areas in West Yellowstone dealing with trails used by snowmobilers.

SEN. O'NEIL felt the bill was as inclusive as it can get and snowmobilers would have to travel on public access roads to get to the destination. He added if the bill was amended more then it would effect private properties.

SEN. HALLIGAN said this bill includes private property and the issue deals with a groomed trail that isn't covered.

CHAIRMAN GROSFIELD mentioned these trails and there may be no grooming of trails and those areas would not come into this bill. Snowmobilers would have to go through these areas to get to the trails and that is the issue to be clarified.

SEN. GRIMES clarified the current law dealing with roadways.

CHAIRMAN GROSFIELD said it wouldn't help clarify this bill for the public.

SEN. O'NEIL felt the definition would include the snowmobile trails and the bill should be left as is.

CHAIRMAN GROSFIELD suggested to prepare an amendment that the committee could work on.

SEN. GRIMES felt the first part of the bill could be struck and then deal with the second half of the bill on the floor.

SEN. HOLDEN didn't agree with these discussions due to the issues of the trails. He felt if the word "motor" was removed then it would open up difficulties.

Motion/Vote: **SEN. HOLDEN** moved that **HB 295 BE TABLED. Motion failed** with **SEN. HOLDEN** voting yes.

Motion/Vote: **SEN. O'NEIL** moved that **HB 295 BE CONCURRED IN. Motion carried 7-2** with **SEN. HOLDEN** and **CHAIRMAN GROSFIELD** voting no.

EXECUTIVE ACTION ON HB 182

Motion: **SEN. O'NEIL** moved that **HB 182 BE POSTPONED INDEFINITELY.**

Discussion:

SEN. GRIMES pointed out the issues of the bill dealing with new judges. He agreed with postponing of this bill.

Vote: Motion that **HB 182 BE POSTPONED INDEFINITELY carried 6-3** with **SEN. DOHERTY, SEN. HALLIGAN** and **SEN. PEASE** voting no.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus48aad)